

REMARKS/ARGUMENTS

Examiner Interview

Applicant thanks Examiner Mooneyham and Supervisory Patent Examiner Weiss for their time spent in telephonic interviews with the undersigned and Applicant, especially for their suggestions on Claim amendments that would put the application in better condition for allowance. Applicant believes it has added new Claims complying with these suggestions, and accordingly, that the Claims are now in condition for allowance, which action is hereby respectfully requested.

Status of Claims

This is a full and timely response to the final Office Action of November 17, 2004. By the present Amendment, Claims 15, 16, 18, 20 and 31-60 have been canceled without prejudice to the possibility of pursuing allowance of these Claims in later prosecution. Accordingly, all of Claims 1-60 have been canceled. By the present Amendment, new Claims 61-70 have been added to the subject application. It is submitted that all of these new Claims are in condition for allowance for at least the reasons set forth below.

Rejection of Claims 15, 16, 18, 20, 31, 32, 34 - 37, 39 - 42, 44 - 47, 49 - 52, 54 - 57, 59 and 60 under 35 U.S.C. 102(a) based on the Linkstime website

On Page 2, Item 3 of the Office Action, Claims 15, 16, 18, 20, 31, 32, 34-37, 39-42, 44-47, 49-52, 54-57, 59 and 60 were rejected under 35 U.S.C. §102(a) based on the Linkstime website (www.linkstime.com).

By the present Amendment, Claims 15, 16, 18, 20, 31, 32, 34-37, 39-42, 44-47, 49-52, 54-57, 59, and 60 have been canceled without prejudice to the possibility of later presentation of these Claims for consideration in subsequent prosecution. Accordingly, the rejection is moot.

Rejection of Claims 33, 38, 43, 48, 53, 58 under 35 U.S.C. §103(a) based on the Linkstime website in view of Mankes (U.S. Patent No. 6,477,503)

On Page 8, Item 4 of the Office Action, Claims 33, 38, 43, 48, 53, and 58 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Linkstime website in view of Mankes (U.S. Patent No. 6,477,503).

By the present Amendment, Claims 33, 38, 43, 48, 53, and 58 have been canceled without prejudice to the possibility of later presentation of these Claims for consideration in subsequent prosecution. Accordingly, this rejection is moot.

Rejection of Claims 15, 16, 18, 20, 31-35, 41 - 45, and 51 - 55 under 35 U.S.C. §103(a) based on the Declaration of Michael E. Last and the Linkstime website

On Page 8, Item 5 of the Office Action, Claims 15, 16, 18, 20, 31-35, 41-45, and 51-55 were rejected under 35 U.S.C. §103(a) based on the Declaration of Michael E. Last and the Linkstime website.

By the present Amendment, Claims 15, 16, 18, 20, 31-35, 41-45, and 51-55 have been canceled without prejudice to the possibility of later presentation of these Claims for a subsequent prosecution. Accordingly, the rejection of Claims 15, 16, 18, 20, 31-35, 41-45, and 51-55 is moot.

New Claims 61 - 70

By the present Amendment, new Claims 61 – 70 have been added to the subject application. Support for new Claims 61 – 70 is found throughout the specification, drawings and claims of the application as originally filed, including FIGS. 1-4D, pages 3-10 (please see especially pages 8-9). The cited art relied upon by the Examiner to reject the formerly pending Claims and the reasons that newly presented Claims 61 - 70 are patentable over the cited art, are addressed in succession below.

1. The Website www.linkstime.com (“The Linkstime Website”)

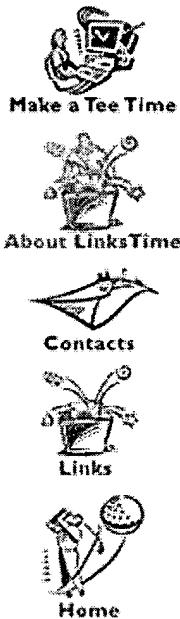
According to the website www.webarchive.org, the Linkstime website was first archived on October 6, 1999. It is evident from reviewing the web pages from the October 6, 1999

archiving as compared to the Linkstime website existing today that its format has changed substantially from the original website layout.

The homepage for the Linkstime website as it existed in October 6, 1999 is as follows:

The screenshot shows the homepage of LinksTime.com. On the left, there's a sidebar with icons for "Make a Tee Time" (golf cart), "About LinksTime" (windmill), "Contacts" (envelope), and "Links" (link icon). Below these are two buttons: "Home" (with a house icon) and "Log in". The main content area features the "LinksTime.com" logo with a golf ball icon, followed by the text "a division of Book4golf.com" and a "PGA TOUR" logo. A large heading "Welcome to LinksTime.com" is displayed. The central text explains the service: "We take the hassles out of finding and making tee time reservations. No more busy phone lines, inconvenient calling times, and dependency on the reservation desk being open. In fact many of our member courses offer advance tee times when booking over the Internet." It continues, "Now when your playing partner is on the telephone, go to the LinksTime.com site, check your favorites, and book your time. You make your times, on your time! Want to see for yourself? Click on the Try a Demo button, and take a look! If you like what you see, and we think you will, go to SIGN ME UP, and get ready to book your next time!" At the bottom of this section is a link to "Plus, get a free one-month subscription to the Web Street Golf Report when you complete the demo!". Below this is a "Log in" button. To the right of the main text are five links: "Try a Demo", "Online Courses", "FAQ", "Sign Me Up", and "Feedback", each preceded by a small icon. At the bottom of the page are links for "Back to Top", "Make a Tee Time", "About LinksTime", "Contact Us", "Links", "Home", "Privacy Policy", "Legal Notices", and "Security Guarantee". The footer includes the "LinksTime.com Service Affiliate Network" logo, copyright information ("Copyright 1998, 1999 LinksTime.com, Inc. All rights reserved."), and a "Member Program Course Managers & Pros Only" logo.

By clicking on the Try a Demo button in the web page above, the following web page results:



Tee Times

Demonstration

Get a free one month subscription to the *Web Street Golf Report* when you finish this demonstration of the LinksTime.com tee time reservation system.

Take our demonstration to see for yourself how easy it is to reserve a tee time.

This demo is connected to our sample golf course only, so you will not be charged our standard US \$1.50 convenience fee per golfer to make a sample reservation, nor will you be able to simultaneously inquire about tee time availability at multiple golf courses like you can in our main reservations area.

Follow these 4 easy steps to make your tee time request. Click on the Send button after you make your selections.

Step 1:

Choose the date you want to play from the calendar below by clicking on the radio button immediately below the desired date. If you want to choose a date in another month, click on the name of the month.

Date Selected: None

April

March 2000						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
					○	○
5	6	7	8	9	10	11
○	○	○	○	○	○	○
12	13	14	15	16	17	18
○	○	○	○	○	○	○
19	20	21	22	23	24	25
○	○	○	○	○	○	○
26	27	28	29	30	31	
○	○	○	○	○	○	

② Step 2:
Select your preferred tee time.

Select Time

③ Step 3:
Enter the number of golfers in your group.

2 3 4

④ Step 4 (optional):
If you want to rent power cart(s), pull cart(s) or sets of clubs, please
select quantity below.

Power Carts:

Pull Carts:

Club Rentals (sets):

Send

From the foregoing, it is clear that Step 2 of the Demo requires entry of a tee time. There is no evidence of record indicating the nature of the web page resulting from performance of Steps 1-4 above.

2. Declaration of Michael E. Last (“the Declaration”)

The relevant paragraphs of the Declaration of Michael E. Last are set forth below:

* * *

4.

In 1998, I initially developed the idea of trying to help a group of local golf courses book a small number of tee times that the golf courses had available for next-day golf. To achieve this, I would call approximately a dozen golf courses each night to gather up approximately 2-5 available tee times from each golf course and write them down on a sheet of paper on my clipboard. I would then open the LMTT phone lines to take calls from individuals (primarily hotel guests) who wanted to book tee times to play golf the next day. Finally, at approximately 1 AM each night, I would fax the reservation information obtained that day to the respective golf courses.

5.

For the most part, callers were made aware of LMTT by various marketing efforts that we conducted in the Atlanta area. In particular, we published and delivered our “Atlanta Golf Course Guide” to over 300 metro Atlanta hotels, printed rack cards that were distributed to over 200 locations including hotels and golf shops, and took part in a local radio show each week. We also established a “partnership program” for hotels, sports bars, retail golf shops and corporate apartments.

* * *

3. U.S. Patent No. 6,477,503 to Mankes (“the Mankes patent”)

The Mankes patent purports to disclose a system in which an event vendor’s inventory resides at and is controlled at the local point of sale site. Col. 2, Lines 57 – 60. Rather than the vendor giving up control and sending its inventory to a central reservation systems for eventual sale, the vendor itself maintains control of its inventory at its own location and allows access to the data to whomever it decides, rather than only authorized users of a central reservation system. Col. 2, Lines 60-65. Once the inventory is sold through one of many networks affiliations, a local transaction removes the item from available inventory both on-site and off-site. According to the Mankes patent, its system was developed to allow event vendors to

maintain their current reservation practices and control their inventory while providing access to their inventory by anyone with Internet access. Col. 3, lines 1-5. The Mankes patent indicates that its system may be used for **entertainment and sporting activities**, vehicle rentals, tour packages and like activities wherein the inventory demand arises on site or off-site, contemporaneously or subsequently. Emphasis added. Col. 4, Lines 30-34. The Mankes patent mentions in its background section that U.S. Patent No. 5,319,548 to Germain discloses a system that collects and analyzes golf information that is recorded on individual golf play recording cards, and further states that such system can also be set up as a central database for storing tee-time reservations for courses worldwide. It does not state that Germain can be used to reserve a tee-time reservation, even though this is mentioned in the Germain patent, a fact which tends to indicate that Mankes did not consider this aspect of the Germain patent important to its disclosure. Further, in the Mankes patent, the mention of reservation of golf tee times appears solely in reference to the discussion of the Germain patent in the Background section, and the Mankes patent nowhere states that its reservation system can be used to reserve golf tee times. The Mankes patent does state that its reservation system may be used for "entertainment and sporting activities" but there is no indication that this encompasses reservation of golf tee times.

4. New Claims 61-70 Patentably Distinguish Over the Prior Art

A. Legal Requirements for Anticipation under 35 U.S.C. §102

Anticipation under 35 U.S.C. §102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). The language of 35 U.S.C. 102 stating "A person shall be entitled to a patent unless..." has been interpreted as putting the burden on the Examiner to establish a *prima facie* case of anticipation. *In re Gene R. Wilder*, 429 F.2d 447, 450 (C.C.P.A. 1970). "Only if this burden is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993).

B. Legal Requirements for Obviousness under 35 U.S.C. §103(a)

The determination of whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art;

and (4) objective evidence of nonobviousness. *In re Dembicza*k, 175 F.2d 994, 998 (Fed. Cir. 1999) (*citing Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 U.S.P.Q. 459, 465 (1966)). The Examiner has the burden of establishing a *prima facie* case of obviousness under 35 U.S.C. §103(a). *Ex Parte Martin P. Hageman and Thomas J. Palus*, Appeal No. 2000-1514, Application No. 09/038,450 (*citing In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)); *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only if the Examiner satisfies this initial burden does the burden of coming forward with evidence shift to the Applicant. *Id.* The Examiner can satisfy this burden by showing some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 87 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

A *prima facie* case of obviousness requires: (1) a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; (2) a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2142, 8th Ed., Rev. 2. The teaching, suggestion, or motivation to modify or combine features in an effort to obtain the claimed invention must be "clear and particular." *In re Dembicza*k, 175 F.3d 994, 999 (Fed. Cir. 1999).

C. Patentability of New Claims 61 – 70

The Linkstime website "teaches away" from the claimed invention. As is clear from Step 2 of the four-step user input process for the Linkstime website, a specific tee time must be input by a golfer desiring to find an available tee time at a desired website. Although there is no disclosure of record as to the web page that results upon submitting the input data to the Linkstime website, one may surmise that available tee times are searched through the golfer's specification of a specific tee time in Step 2. This approach results in frustration on the part of

the golfer entering data in the event that the specified tee time is not available at the desired tee time. It requires the golfer to guess the available tee times after entry of a considerable amount of data, submit the data, and repeat until an available tee time at a desired golf course appears. This ‘shot in the dark’ approach to indicating available tee times is highly frustrating to golfer’s and has indeed been a significant cause of tee time reservation websites going out of business. Thus, properly considered, the Linkstime website teaches away from the claimed invention. In addition, a person of ordinary skill in the art would not have been motivated to combine the Linkstime website with either of the Mankes patent or the Declaration of Michael E. Last for at least this reason. Thus, no *prima facie* case of anticipation or obviousness has been made out and Claims 61-70 are patentable over the prior art.

Moreover, the motivation to combine references must be found in the prior art and not in the applicant’s disclosure. *In re Fine*, 87 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). There is simply no teaching or suggestion in the prior art, nor knowledge generally available to a person of ordinary skill, that would have led such person to combine the Linkstime website with the Mankes patent and Declaration of Michael E. Last as done in the Office Action. Absent such motivation in the prior art, it is evident that the motivation must be originating from the Applicant’s disclosure, in effect impermissibly using what the Applicant has taught against the Applicant. Accordingly, no *prima facie* case of obviousness has been made out for new Claims 61 – 70 are patentable over the prior art for this reason.

In addition, the demo of the Linkstime website is clearly inoperative for its intended purpose: it cannot be used to reserve tee times. It is submitted that the Linkstime website is thus not prior art. There is no evidence of record as to how the actual working part of the Linkstime website operated, only an ambiguous statement “...nor will you be able to simultaneously inquire about tee time availability at multiple golf courses like you can in our main reservations area.” It says very little, if anything, about the interface provided to the golfer in response to the inquiry, and nothing about how responsive tee times might be arranged. Applicant cannot fairly respond to what has not been made of record. To the extent that reliance is placed upon the actual working part of the Linkstime website, Applicant objects to the same as hearsay proscribed as evidence under Rule 802, Federal Rules of Evidence since it has not been made of record. Thus,

for this additional reason, no *prima facie* case of obviousness has been established for these reasons.

Furthermore, whether considered alone or in combination, the Linkstime website, the Mankes patent and the Declaration fail to disclose several limitations of the claimed invention. Since a *prima facie* case of anticipation or obviousness requires each and every limitation of the claimed invention to be disclosed in the prior art, as a matter of law, no *prima facie* case of anticipation or obviousness has been established for at least the following reasons.

For the Examiner's convenience, New Claim 61 is set forth below:

New Claim 61. A method comprising the steps of:

with a hub server,

receiving a request for a web page from a golfer computer via a communications network, the golfer computer located remotely from the hub server;

in response to the request,

generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date; and

transmitting the single web page to the golfer computer via the communications network.

The Linkstime website fails to disclose at least the generating step recited in new Claim 61. There is no evidence of record as to the configuration of a web page generated by a user's input of the requested data in the four-step process of the Linkstime website as indicated above. However, to the extent it is even possible to surmise what it might look like, it is clear that the output web page by the Linkstime website is dependent upon entry of a specific tee time in Step 2 of its four step process (see Linkstime web pages above). This implies that the working part of the Linkstime website, if it existed, required a search of a database to be conducted to identify whether that specific tee time is available at multiple golf courses. Thus, any resulting web page served to a golfer would not contain multiple tee times for each of multiple golf courses as recited in new Claim 61, but instead would have an indication of only one specific tee time and whether that tee time is available at multiple golf courses. Using the Linkstime website

approach, the user will often find that tee times for desired golf courses are reserved, which requires the user to repeat specification of a tee time, if not all four steps of the input process required by the Linkstime website. This ‘shot in the dark’ approach to finding an available tee time causes users considerable frustration due to the fact that it often happens that tee times entered were previously reserved, requiring the user to in effect guess what tee times may be available at golf courses of interest. New Claim 61 avoids this frustration by permitting a golfer to obtain multiple available tee times for multiple golf courses without having to guess what tee times a golf course might have available.

The Mankes patent provides no disclosure of the nature of the user interface provided to consumers who use the reservation system. The Mankes patent thus fails to disclose at least the generating step of new Claim 61 because it does not generate a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, in which the multiple tee times indicated as available for each golf course for a date are less than all of the tee times at the golf course for the date, as recited in new Claim 61. In addition, the Mankes patent does not state, at least not with the clearness and particularity required by *In re Dembicza*k, that its reservation system can be used to reserve golf tee times. The Mankes patent mentions in its Background section that the Germain patent, one of many patents mentioned, can be set up as a central database for storing tee-time reservations for courses worldwide. The Mankes patent also mentions that its reservation system can be used for “entertainment and sports activities” but there is no further specificity as to what this might mean. For example, it may perhaps refer to reserving tickets as a spectator for sporting events such as football games and the like, as distinguished from an active participant such as a golfer reserving a golf tee time. Accordingly, for all of the above reasons, the Mankes patent fails to teach or even suggest “a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers” as recited in new Claim 61.

The procedure described in the Declaration of Michael E. Last does not teach or suggest any of the steps recited in new Claim 61. More specifically, new Claim 61 recites “with a hub server, receiving a request for a web page from a golfer computer via a communications network, the golfer computer located remotely from the hub server.” The Declaration nowhere

mentions any hub server that receives a request for a web page from a remote golfer computer via a communications network. New Claim 61 further recites “generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date.” The Declaration nowhere mentions generating a single web page listing multiple available tee times for each of multiple golf courses, nor does it mention that the available tee times are less than all the golf course has for a date. Furthermore, new Claim 61 recites “transmitting the single web page to the golfer computer via the communications network.” This limitation too is not disclosed in the Declaration. Nor is new Claim 61 merely providing an automatic means to replace manual activity per *In re Venner*, 262 F.2d 91, 95, 120 U.S.P.Q. 193, 194 (C.C.P.A. 1958). The manual activity in the Declaration is using a telephone to call golf courses for available next-day tee times, writing down tee times from the golf courses, using operator controls to open the telephone lines, picking up a telephone receiver to take calls from individuals desiring to play golf, writing down reservations on paper, and manually loading the paper into a facsimile machine for transmission of information to the golf courses. New Claim 61 does not automatically call golf courses, write down tee times, use operator controls to open telephone lines, pick up a telephone receiver to speak with golfers, write down reservations on paper, or load paper into a facsimile machine for transmission to golf courses. Thus, the holding of *In re Venner* is inapposite to the claimed invention. Further, new Claim 61 specifically recites that the method is performed by a hub server communicating with a golfer computer via a communications network, which is thus distinguishable from an operator communicating with voice communications over a telephone network. Voice communication by its nature communicates information in serial fashion, and requires an operator to interrogate the golfer over the telephone to determine the golf course and tee time desired by the golfer. In contrast, the single web page generated and transmitted to the golfer computer via the communications network in response to the golfer’s request in the method of new Claim 61 provides a simultaneous display of multiple tee times at multiple golf courses, less than all available at each golf course, in a way that displays this information on a single web page that does not overwhelm the golfer or require transmission of excessive data. Thus, all of the

interrogation steps required by the process set forth in the Declaration are eliminated through generation of a single web page with the information desired by the golfer. Accordingly, new Claim 61 is patentable over the prior art of record.

New Claims 62 – 67 depend from Claim 61 and include all of the limitations of that Claim and additional limitations that are not taught or suggested by the prior art. For example, Claim 62 recites “receiving specific tee times posted by a plurality of golf course users’ computers via the communications network, the golf course users’ computers located remotely from the hub server and the golfer computer; storing the available tee times in a database; and in response to the request, retrieving the available tee times from the database for use in the generating the single web page.” These features of the claimed invention are not disclosed in the prior art. For example, on the Linkstime website there is no disclosure as to how tee times are received from golf courses. In the Mankes patent, there is no disclosure of receiving golf tee times from a plurality of golf course computers, and thus no storing or retrieving steps either. In the Mankes patent, there is only one event owner server (EOS), not multiple servers. There is thus no aggregation of tee times from multiple golf courses as there is in the claimed invention. The Declaration discloses use of voice communication over a telephone network between an individual operating the tee time reservation service and golf course employees at the various golf courses to obtain available tee times. Such voice communications clearly are not between a hub server and golf course users’ computers as recited in the Claim. Thus, it is submitted that new Claim 62 is patentable.

New Claim 63 recites steps of “receiving a reservation for a selected golf course and tee time from the user computer via the communications network; storing the reservation in the database; and transmitting the reservation to the computer of the selected golf course via the communications network.” These features of the claimed invention are not taught or even suggested by the prior art. The Linkstime website requires prior selection of the tee time by the golfer, so only the indication of the golf course is returned by the golfer in making the reservation. The Mankes patent requires transmission of a request to conclude a transaction to the event owner server (EOS) since all transactions are under the control of the event owner. The Declaration discloses only use of voice communication between golfer and reservations

operator over a telephone network to reserve a tee time, and writing down the reserved tee time on paper for faxing to a golf course. The Declaration does not mention a hub server receiving a reservation for a selected golf course and tee time from the user computer via the communications network; storing the reservation in the database; and transmitting the reservation to the computer of the selected golf course via the communications network. These features make the tee time reservations process much easier for the golfer, operator, and golf course user, and make the reservation process much more real-time and up-to-date, avoiding possible missed tee times and double bookings that might otherwise occur. Accordingly, new Claim 63 is patentable over the prior art.

New Claim 64 recites that “the communications network is the Internet” which clearly excludes the procedure recited in the Declaration which uses only a telephone network.

New Claim 65 recites that “the listing of the multiple available tee times are next-day tee times for respective golf courses.” None of the Linkstime website, the Mankes patent, and the Declaration disclose generating a web page with such a listing and transmitting the same to golfer computers as recited in the claimed invention.

New Claim 66 recites that “the request designates a specific geographic region and the single web page is generated to list available tee times for only the golf courses in the specific geographic region.” Neither the Linkstime website, the Mankes patent, nor the Declaration teach or even suggest such feature of the claimed invention.

New Claim 67 recites that “the request includes a date on which the golfer desires to play but does not require the golfer to specify the golfer’s desired time of play in order to generate a list of available tee times.” This feature of the claimed invention specifically excludes input of a time of day as required in Step 2 of the input process of the Linkstime website which is required in this ‘shot in the dark’ approach to searching for available tee times. Likewise, the Mankes patent and Declaration fail to teach or even suggest a request specifying a date on which a golfer desires to reserve a tee time without specifying the golfer’s desired time of day for the reservation, nor generation of a listing of multiple tee times available for reservation based on the date specified by the request. Accordingly, for all of these reasons as well as for the reasons stated above with respect to new Claim 61, new Claims 62 - 67 are patentable over the prior art.

New Claim 68 is set forth below for the Examiner's convenience:

New Claim 68. A method comprising the steps of:

with a hub server,

receiving a request for a web page from a golf course user computer via a communications network;

in response to the request, serving the web page to the golf course user computer via the communications network, the web page comprising a listing of tee times at the golf course and an interface permitting a golf course user to select specific tee times to be posted to the hub server via the communications network to be made available for reservation by golfers via the communications network;

receiving the selected tee times posted to the hub server from the golf course computer via the communications network; and

storing the specific tee times selected making those specific tee times available upon request from a golfer computer via the communications network,

the hub server, golf course computer, and golfer computers located remotely from one another.

None of the steps recited in new Claim 68 are taught or even suggested by the Linkstime website, the Mankes patent, or the Declaration. Thus, there would have been no motivation to combine the references with any reasonable expectation of success in obtaining the claimed invention, and even if combined, each and every step recited in new Claim 68 is not disclosed in the prior art. Thus, no *prima facie* case of anticipation or obviousness can be made out with respect to new Claim 68 based on the prior art of record.

More specifically, the Linkstime website contains no disclosure as to how tee times are received from a golf course and made available for reservation at the website. For reasons previously explained, the Mankes patent can be fairly said not to disclose any tee time reservation system. Even if one assumes the Mankes patent's reservation system is used for reservation of tee times, the Mankes patent fails to disclose any hub server "receiving a request for a web page from a golf course user computer via a communications network." In the Mankes patent, server-to-server communications permit the event owner server (EOS) to replicate its data to the active reservation server (ARS) which never changes any data to permit the EOS to control

the on-site and off-site inventory. The Mankes patent; Col. 6, Lines 33 – 44. There is no disclosure in the Mankes patent that the EOS server requests a web page from the ARS. In fact, since the communication in the Mankes patent is between two servers, it is reasonable to assume that no web page is requested or transmitted between them. Furthermore, new Claim 68 recites a step of “in response to the request, serving the web page to the golf course user computer via the communications network, the web page comprising a listing of tee times at the golf course and an interface permitting a golf course user to select specific tee times to be posted to the hub server via the communications network to be made available for reservation by golfers via the communications network.” The Mankes patent discloses no serving of a web page by the ARS to the EOS with a listing of tee times at the golf course and an interface to permit a golf course user to select tee times to be posted to the ARS to be made available for reservation by golfers via the communications network. The Mankes patent necessarily also fails to disclose the receiving and storing of the selected tee times selected by the golf course user via the interface to be made available for reservation by a golfer computer via the communications network recited in new Claim 68.

The Declaration discloses a procedure in which a tee time reservations operator calls golf courses via telephone to request tee times to be made available to golf course users. Instead, in new Claim 68, the golf course computer requests a web page for entry of tee times to be made available for reservation by golfers. Thus, in the claimed invention, the golf course user can initiate communication at a time when it is convenient for the golf course user as opposed to receiving a call from a reservations operator at a time when it may not be convenient for the golf course user as occurs in the procedure disclosed in the Declaration. In addition, the procedure in the Declaration requires the reservations operator to call the golf courses via telephone to gather tee times to write down to make available for golfers to reserve by telephone. In contrast to this procedure which requires detailed interaction via telephone, in new Claim 68, the golf course user is presented with a web page with an interface from which the golf course user can select tee times, thus greatly simplifying the actions required of the golf course user and reducing errors resulting through voice communication and its serial nature that could lead to missed tee times or double bookings. In addition, the procedure described in the Declaration fails to mention

“receiving the selected tee times posted to the hub server from the golf course computer via the communications network” and “storing the specific tee times selected making those specific tee times available upon request from a golfer computer via the communications network” as recited in new Claim 61. Moreover, new Claim 61 recites “the hub server, golf course computer, and golfer computers located remotely from one another.” The Declaration fails to disclose any hub server, golf course computer, or golfer computers, regardless of location. Thus, new Claim 68 is patentable over the cited art for this additional reason.

New Claims 69 – 70 depend from new Claim 68 and include all of the limitations of that Claim plus additional limitations that are not taught or even suggested by the prior art. Claim 69 recites that “the web page to the golf course computer indicates the tee times that have been reserved by golfers through the hub server.” In the Linkstime website, there is no disclosure whatsoever as to how tee times are reserved and what actions are taken to indicate to the golf course the fact that a tee time has been reserved (if any of these actions are taken at all). In the Mankes patent, the active reservation server (ARS) never modifies any data: instead, replicated data is transmitted from the event owner server (EOS) to the ARS and this data cannot be modified by the ARS (Col. 6, Lines 33-44). In the procedure described in the Declaration, facsimile transmission is used to transmit reserved tee times to the golf courses. Thus, in the Declaration procedure, no web page is served that indicates the tee times that have been reserved, particularly not in conjunction with the other features of the web page such as its listing of tee times and interface for selecting tee times. New Claim 70 recites that “the listing of available tee times comprises next-day tee times at the respective golf courses.” The Linkstime website does not disclose anything regarding how tee times are obtained from golf courses. The Mankes patent only mentions that dates are used to determine available hotel room inventory using conventional systems at a local hotel. It does not disclose serving a web page containing a list of next day tee times from the ARS to the EOS. In the procedure described in the Declaration, the reservations operator calls the golf course users to obtain next-day tee times. This is markedly different from serving a web page that lists next-day tee times for selection by the golf course user with the interface as recited in new Claim 70, a feature which enables the golf course user to readily select tee times for upload to the hub server to be made available for

reservation by golfer computers via the communications network. This greatly simplifies and speeds the actions required of a golf course user to upload next-day tee times to be selected as available for golfers to reserve via the communications network. Because next-day tee times are a wasting asset representing lost revenue opportunity if not reserved, the simplicity and speed with which a golf course user uploads next-day tee times can be essential to producing revenue-generating reservations. Thus, for these reasons as well as for the reasons stated above with respect to new Claim 68, it is submitted that Claims 69 – 70 are patentable over the prior art of record.

Swearing Back of the Linkstime Website

Attached as Exhibit 1 is the Declaration of Michael E. Last (hereinafter “Mr. Last”) the inventor of the claimed subject matter. In Paragraphs 8–28, Mr. Last testifies that he conceived of the invention defined by Claims 61, 62, and 64-67 before October 6, 1999, the earliest date on which the Linkstime website was captured by the Internet Archive Wayback Machine. In addition, in Paragraphs 29 – 34 of his Declaration, Mr. Last testifies the invention claimed by Claims 61, 62, and 64-67 was reduced to practice at least as early as October 27, 1999. Furthermore, Mr. Last testifies that he exercised diligence at all times from October 5, 1999 until the invention was reduced to practice on October 27, 1999. In Paragraphs 35-37 of his Declaration, Mr. Last introduces evidence proving his diligence in reducing the invention to practice over the time period from October 5, 1999 to October 27, 1999. Furthermore, Mr. Last testifies that, due to other responsibilities, for any period in which diligence is alleged not to have been achieved, the same is excused by his many other responsibilities in operating a business.

Attached as Exhibit 2 is the Declaration of Joseph P. Abele (hereinafter “Mr. Abele”). In Paragraphs 4-5, he testifies that he developed the website according to specifications provided by Mr. Last on September 28, 1999, corroborating conception of the claimed invention. In addition, he testifies in Paragraphs 6-8 of his Declaration that he developed a working website providing a golfer interface with a web page including multiple tee times at multiple golf courses, less than the entire tee sheet of times for a day, available at the golf courses for reservation. He further testifies that the LMTT system was fully capable of executing the claimed method to serve the golfer web page and to take reservations from the golfer via the Internet. In Paragraph 13 of his

Declaration, Mr. Abele testifies that he worked diligently from receiving the specifications on September 28, 1999, through to reduction to practice in October 27, 1999, and further through to commercial launch of the LMTT reservations system on December 1, 1999. He further testifies that this is an extraordinarily fast development period for adding the golfer reservations capability to the LMTT website.

Objective Evidence of Nonobviousness

Among the objective evidence that must be considered in an obviousness determination, are included: (1) commercial success of the invention; (2) existence of a long-felt need in the art for the invention; (3) acclaim for the invention by experts in the field; (4) failed attempts of others; (5) evidence of copying of the invention by others; and (6) unexpected results attained by the invention. *In re Dembiczaik*, 175 F.2d 994, 998 (Fed. Cir. 1999) (citing *Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 USPQ 459, 465 (1966)). See also *Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996).

1. Commercial Success of the Claimed Invention

In Exhibit 1 - Paragraphs 39-45 of his Declaration, Mr. Last testifies regarding the commercial success of the claimed invention. In particular, he indicates that providing the golf course user with a web based interface that allows for easy selection of specific tee times to "internet enable" is an important factor in the success of the LMTT system embodying the claimed method. In addition, by generating a signal web page that displays a subset of available tee times at a plurality of golf courses, a golfer is provided with the right amount of choice to select a tee time without overwhelming the golfer with complicated queries that often lead to frustration. In addition, if a golf course has numerous tee times available and displays them all, then for various reasons golfers may avoid playing the golf course, a problem which the claimed method helps to avoid by posting a subset of available tee times rather than the entire tee sheets of golf courses. As Mr. Last's Declaration makes clear, the growth of use of the LMTT system has been staggering in terms of use by golfers and golf courses, and its financial success is manifest, due in large part to use of the claimed methods.

Attached as Exhibit 3 is the Declaration of Joseph Ferguson (hereinafter "Mr. Ferguson"). In Paragraphs 2-3 of his Declaration, Mr. Ferguson testifies that he appreciated the value of LMTT system in providing a golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page, so much so he considered investing in the company.

In Exhibit 4 – Paragraph 5 of his Declaration, Carl Danbury (hereinafter "Mr. Danbury") indicates that dozens of golfers that play in his numerous golfing events each year comment on using the LMTT website to reserve tee times and appreciate the convenience it provides through the booking interface.

In Exhibit 5 – Paragraph 5 – 6 of his Declaration, Brandy Jones (hereinafter "Mr. Jones") testifies that golfers who reserve tee times at the LMTT website to play golf at his golf course routinely comment on how easy the LMTT website is to use due to its simplified golfer interface, and that in his own experience use of the golf course interface has been easy. This testimony evidences the commercial success of the LMTT website due to its implementation of the claimed methods.

In Exhibit 6 is an article published May 2000 in Golf News – Georgia's Golf Newspaper. The article describes the significant growth of golfers and golf course users using the LMTT website, and their appreciation of its benefits.

Exhibit 7 is an article published in Atlanta Catalyst magazine explaining some of the benefits of the LMTT website that have led to its commercial success.

2. Long-Felt Need in the Art

In Exhibit 1 - Paragraphs 46 - 51 of his Declaration, Mr. Last makes it clear that there was a long-felt need for the invention at the time it was made. In particular, Mr. Last notes that golfers recall the difficulties of reserving tee times back in 1999, and what an improvement LMTT's system was over the way in which the majority of tee times were then made. Mr. Last notes in his Declaration that one golfer, Scott from Detroit, representative of many, indicates that previous websites for reserving tee times were extremely difficult to use, and notes that using the LMTT website is easier than calling golf courses directly to reserve a tee time.

In Exhibit 3 - Paragraph 2-6 of his Declaration, Mr. Ferguson testifies that his research in early to mid 2000 when considering making an investment in LMTT indicated that other websites did not have the LMTT system's golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page. He appreciated then the value of this golfer web interface over other that had existed at that time.

In Exhibit 4 - Paragraph 3-4 of his Declaration, Mr. Danbury testifies that he looked at similar tee time services in early 2000, but could find none that compared with LMTT's booking page and interface for the consumer, and was so intrigued that he invested in LMTT.

In Exhibit 5 – Paragraph 3 – 4 of his Declaration, Mr. Jones testifies that in his seven years in golf, LMTT was the first to provide a golfer interface via the Internet listing multiple tee times at each of multiple golf courses without listing the entire tee sheet of the golf course.

3. Acclaim for the Invention by Experts

In Exhibit 1 - Paragraph 52 of his Declaration, Mr. Last testifies regarding an email received from a golfer by the name of Andrew Prinz. He explains that after years of frustration, through the LMTT website, he can look at available tee times at over 40 different courses in one screen shot, expressing gratitude to LMTT for making its website available. His years of experience with golf qualify him as an expert in the field.

In Exhibit 4 - Paragraphs 2 and 5 of his Declaration, Carl Danbury indicates that he was so impressed with the service and Web site booking module of LMTT, that he decided to profile his service and company for the first issue of Points North magazine. Given his extensive experience with golf, it is fair to say that he is an expert in this field.

In Exhibit 5 – Paragraphs 5 and 6 of his Declaration, Mr. Jones testifies that golfers he encounters routinely comment on the ease of use of the LMTT website, and further testifies that as a golf course user using the LMTT interface to post tee times to the hub server, the LMTT interface is easy to use. Mr. Jones has over seven years of experience in golf.

4. Failed Attempts of Others

In Exhibit 1 - Paragraphs 53 and 54 of his Declaration, Mr. Last testifies as to the failed attempts of others to derive the claimed methods. He testifies that websites that attempt to put the entire tee sheet of a golf course on their websites go out of business due to golfer frustration

in using such websites. In addition, those websites that require a golfer to take a "shot in the dark" to effectively guess which tee times of a golf course are available, are very frustrating to golfers, leading to their avoidance of such websites, and decline of their businesses. Mr. Last testifies that most of the original tee time reservation websites from 1999 have now gone out of business or have been acquired for relatively little, and of those that remain, most have abandoned their old approaches to copy the LMTT website and the claimed methods.

In Exhibit 5 – Paragraph 7 of his Declaration, Mr. Jones testifies that in his experience, golf websites that are single golf course websites, or that list the entire tee sheet of a golf course, or that require a complex search on the part of the golfer, usually fail by employing these strategies.

Exhibit 8 is a listing of tee time reservation websites that are believed to have gone out of business. The website www.thegolfer.com used a complex "shot in the dark" approach similar to the Linkstime website, in which the golf course, date, time, etc. must be specified just to be able to check whether a tee time is available, an approach that greatly frustrates the golfer.

Exhibit 9 is another website similar to the Linkstime website, www.teematic.com, in which the golfer must specify the city, number of golfers in party, size of course, date of play, time of play, latest time of play acceptable to the golfer, and price range. One can readily appreciate that to enter all of this data only to find that the tee time is not available for the data specified, requiring re-entry of data, is a great source of frustration to golfers attempting to use websites of this nature.

5. Copying

In Exhibit 1 - Paragraphs 55-71, Mr. Last testifies to the extensive copying of the claimed methods, in many cases with direct evidence of copying of these methods from the LMTT website by others. The Tee Time King website, Golfviews.com / E-Golf.net website, Last Chance Tee Times website, and Click 4 Tee Times website, and the suspicious circumstances surrounding their adoption of features similar to the claimed methods, all tend toward the inescapable conclusion that the LMTT website and claimed method have been copied by developers of other websites. By copying the claimed features of the LMTT website, it is

evident that the copyists have learned to appreciate the merit of the claimed methods, and the commercial success attainable with them.

6. Unexpected Results

In Exhibit 1 - Paragraph 72, Mr. Last testifies regarding the unexpected and desirable results achieved by the claimed methods. In particular, he notes that most would view it counterintuitive not to provide the golfer with all possible choices for tee times in which the golfer may be interested. In fact, this approach has been proven to be fatal to many tee time reservation websites. Mr. Last testifies that contrary to popular thinking, the counterintuitive approach of limiting the amount of tee times per course, but including multiple courses to chose from, is a key to success, producing results unexpected by many websites that have operated in this industry.

Miscellaneous

Unless amended Claim limitations are expressly relied upon for purposes of patentability, such amendments are made only for the purpose of improving the form of the Claim. Thus, the right to claim equivalence as to any element so amended is expressly reserved for such Claim amendments.

Conclusion

By the present Amendment, Claims 1-60 have been canceled without prejudice so that the rejections of these Claims are moot. New Claims 61 – 70 have been added to the subject application. It is submitted that new Claims 61 – 70 are patentable over the prior art for at least the reasons stated above. It is therefore respectfully requested that a Notice of Allowance be issued in due course. If the Examiner has any questions regarding the subject application, the Examiner is requested to contact the undersigned attorney at the telephone number provided below.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

Appl. No.: 09/802,367

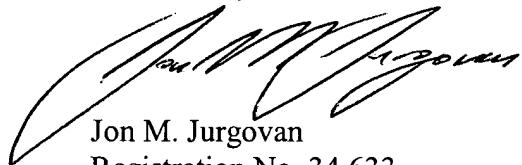
Filed: March 9, 2001

Page 28



therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



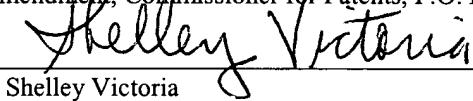
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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



A handwritten signature in black ink, appearing to read "Shelley Victoria".

Shelley Victoria